SUPREME COURT OF INDIA

Kanaksingh Raisingh Rav

Vs.

State of Gujarat

Crl.A.No.521 of 2002

(N. Santosh Hegde and B. P. Singh JJ.)

29.11.2002

JUDGEMENT

Santosh Hegde, J.

1. The appellant in this appeal was found guilty of an offence punishable under S. 302, I.P.C. by the Additional Sessions Judge, Baroda and was sentenced to undergo imprisonment for life. His appeal against the said judgment and conviction to the High Court of Gujarat at Ahmedabad having failed, the appellant is before us.

2. Briefly stated prosecution case is that due to quarrel between him and his wife, the appellant had set her on fire after beating her and pouring kerosene on 14-6-1997 at their residence, consequent to which she died on 15-6-1997 in the hospital. After the incident in question, it is the prosecution case that she was taken to a primary Health Centre at Sankheda where PW-5 the doctor gave her the initial treatment. Since her condition was very serious, he was requested by the police, who had by then come to the Health Centre, to record her dying declaration which the doctor did. This declaration is marked as Ex. 20. The said document was attested by the doctor but no thumb impression of the deceased was taken since the same could not be done because of the excessive burns in her body. In her dying declaration, she has stated that her husband was quarrelling with her and had beaten her the previous night and on the date of the incident at about 11 O'clock when she was cooking chapati, he poured kerosene and burnt her with a match stick and her clothes started burning and her body got burnt. She has also stated that she started shouting and later became unconscious. She further stated that she regained consciousness at Sankheda hospital, and was making a statement while conscious. She has also stated that she is an illiterate.

3. Most of the prosecution witnesses have not supported the prosecution case fully. The Sessions Court as well as the High Court having considered the dying declaration and relying upon the same and accepting the evidence of PW-5, the doctor, have convicted the appellant as stated above.

4. In this appeal, Shri Ranjan Mukherjee, learned counsel appearing for the appellant has very vehemently contended that even according to the prosecution case the burn injuries of the deceased were so severe that she could not have been in a fit state of mind or condition to make a dying declaration. He pointed out that the very fact that she had become unconscious after she was burnt, and that the primary Health Centre did not have the necessary pain killing medication, would also show that the deceased could not have made the dying declaration, and if at all she has made any such declaration, she was definitely not in a fit state of mind to make such a declaration. Therefore, in the absence of any other material to corroborate her evidence, the dying declaration should not be relied upon. He also relied on the decisions of this Court in the case of *Paparambaka Rosamma and others v. State of A. P.*[1], *Arvind Singh v. State of Bihar*[2] *and Panchdeo Singh v. State of Bihar*[3].

5. We notice that the prosecution witnesses though have not fully supported the prosecution case, have substantially supported the same, but since on certain material facts they have deviated from their previous statement, the learned Sessions Judge at the instance of the prosecution has considered it proper to treat them hostile. Therefore, we do not intend to place any reliance on their evidence. Question then is, can a conviction be based primarily on the dying declaration of the deceased in this case? In this regard we do not think it is necessary for us to discuss the cases cited by the learned counsel which is noted herein above because, in our opinion, the law is well settled, i.e. if the declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration. In the instant case, the evidence of PW-5 the doctor very clearly shows that the deceased was conscious and was medically in a fit state to make a statement. It is because of the fact that a Judicial Magistrate was not available at that point of time, he was requested to record the statement which he did. His evidence in regard to the state of mind or the physical condition of the deceased to make such a declaration has not been challenged in the cross-examination. That being so it should be held that the deceased was in a fit state of mind to make a declaration as held by the Courts below. The next question for our consideration is whether this statement is voluntary and truthful. It is not the case of the defence that when she made the statement either she was surrounded by any of her close relative who could have prompted her to make an incorrect or false statement. In the absence of the same so far as the voluntarariness of the statement is concerned, there can be no doubt because the deceased was free from external influence or pressure. So far as the truthfulness of the statement is concerned, the doctor (PW-5) has stated that she has made the said statement which, as noted above, is not challenged in the cross-examination. The deceased in her brief statement has, in clear terms, stated that because of the quarrel between her and the accused, the accused had poured kerosene and set her on fire which, in our opinion, cannot be doubted. The only defence put forth by the appellant is that at the time of the incident he was not present and he was outside the house taking bath near a well and it is only when he came to know of the incident, he came to the house and tried to save the wife by putting off the fire. This part of the evidence has not been accepted by the Courts below and we find no reason to differ from the same.

6. For the reasons stated, this appeal fails and the same is dismissed. Appeal dismissed.

[1]*(1999 (7) SCC 695)* [2]*(2001 (6) SCC 407)* [3]*(2002 (1) SCC 577)*